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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,041	06/15/2006	Masayoshi Usui	F-8634	8020
28107 7590 02/02/2011 JORDAN AND HAMBURG LLP 122 EAST 42ND STREET SUITE 4000 NEW YORK, NY 10168				
EXAMINER				
DUONG, THO V				
ART UNIT		PAPER NUMBER		
3744				
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02/02/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/574,041

Applicant(s)

USUI ET AL.

Examiner

Tho v. Duong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 22-25 is/are pending in the application.
- 4a) Of the above claim(s) 1, 3, 13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2, 4-12, 15-19 and 22-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's amendment filed 11/12/2010 is acknowledged. Claims 1-19 and 22-25 are pending. Claims 1,3,13 and 14 still remain withdrawn from further consideration.

Response to Arguments

Applicant's arguments filed 11/12/2010 have been fully considered but they are not persuasive. Applicant's argument that reference to Marukasa does not disclose that the connection pipe is curved outwardly while the connection is twisted in the circumferential direction, has been very carefully considered but is not found to be persuasive. The method of forming the device (curved outwardly while twisted) is not germane to the issue of the patentability of the device itself. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). In this case, the heat exchanger in the product by process claim is the same as or obvious from the heat exchanger of the prior arts, the claim is unpatentable even though the prior heat exchanger was made by a different process. Regarding the method of forming (connection pipe is curved outwardly while the connection is twisted in the circumferential direction), the return portion (b as shown in figure 3) of Marukasa is the same as or obvious with the connection portion (13) as claimed, the claim is unpatentable even though the prior art heat exchanger was made by a different process such as curved outwardly and then twisted. Furthermore, as an evidence of a return

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portion of a serpentine tube heat exchanger can be formed by twisting and curved outwardly, reference of Charlton (US 2,851,082) show the return portion of a continuous serpentine tube is formed by twisting and curved outwardly.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2,4-5,7,8,9,11,12,15,19,23 and 25 under 35 U.S.C. 103(a) as obvious over Marukasa Shigeo (JP 2000199697A). Marukasa discloses (figures 1-5) a plurality of fin members (3) composes of a plurality of parallel plate fins (3a) arranged in parallel, the fins having both opposing end surfaces provided with a plurality of engagement grooves (35) in parallel and at regular spaces; a meandering pipe main body including a plurality of straight pipe section to be disposed in the engagement grooves of the fin members; the plurality of straight pipe sections arranged in parallel and spaced by an insertion gap (vertical gap); a pair of meandering sections formed such that the plurality of straight pipe section are joined through bend portions (5), the pairs of meandering sections arranged so as to be opposed to each other through an opposing gap for fin members (horizontal gap); a connection pipe (b) has a curved portion to arranged to form a narrow distance between the one and the other meandering sections; the opposing straight pipe sections of the one and the other meandering sections of the meandering pipe main section are paired and wherein within the plurality of insertion gap for the fin members

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formed in a tired manner between a plurality of pair of adjacent straight pipe sections, each fin member is placed so as to lie astride the one and the other meandering sections, and wherein the straight pipe sections of the one meandering section are disposed in the engagement grooves (35) on one end surface of the fin members, and the straight pipe sections of the other meandering section are disposed in the engagement grooves on the other surface of the fin members in a secured manner; the engagement grooves are provided at each opposing end surface at a non- bend surface side of the corrugated fin. Regarding claim 15, the fin is formed with tapered end portions (clipping members) to securely clip the fin to the straight pipe section. Regarding claim 23, the fin tapering portions also provide a plurality of flow channels, which is capable of allowing air flowing through. Regarding 2,8,9,11 and 12, Marukasa discloses all of applicant's claimed apparatus except for the method of forming the product such as cutting, press deforming, method of inserting the tube into the groove and method of forming a narrow space such as twisting. However, these methods are not germane to the issue of the patentability of the device itself. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). In this case, the heat exchanger in the product by process claim is the same as or obvious from the heat exchanger of the prior arts, the claim is unpatentable even though the prior heat exchanger was made by a different process. Regarding the method of forming

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(connection pipe is curved outwardly while the connection is twisted in the circumferential direction), the return portion (b as shown in figure 3) of Marukasa is the same as or obvious with the connection portion (13) as claimed, the claim is unpatentable even though the prior art heat exchanger was made by a different process such as curved outwardly and then twisted. Furthermore, as an evidence of a return portion of a serpentine tube heat exchanger can be formed by twisting and curved outwardly, reference of Charlton (US 2,851,082) show the return portion of a continuous serpentine tube is formed by twisting and curved outwardly. Regarding claim 19, fins and the tubes have surfaces, which is capable of being subjected to any coating process.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marukasa as obvious in view of Pasternak (US 3,780,799). Marukasa substantially discloses all of applicant's claimed invention as discussed above except for the limitation of collars brought in surface contact with an outer surface of the meandering pipe. Pasternak discloses (figures 2,5-6) that each groove of the fin (4) has collars (35) brought in surface contact with an outer peripheral surface of the meandering pipe main body for a purpose of increasing the heat transfer contact between the fin and the pipe. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Pasternak's teaching in Marukasa's device for a purpose of increasing the heat transfer contact between the fin and the pipe.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marukasa in view of Tokyo Radiator Mfg (JP 63-190777). Marukasa substantially disclose all of applicant's claimed invention as discussed above except for the limitation that the engagement grooves are provided at each opposing end surface at a bend surface side of

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the corrugated fin. Tokyo discloses (figures 1-3) a heat exchanger that has a corrugated fin equipped with engagement grooves located bend surface side for a purpose of increasing the heat transfer surface area between the fin and an inserted tube therein due to the present of the bend surface area. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Tokyo's teaching in Marukasa's device for a purpose of increasing the heat transfer surface area between the fin and the inserted tube therein due to the present of the bend surface area.

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marukasa in view of Arai Nobushige (JP 54088867A). Marukasa substantially discloses all of applicant's claimed invention as discussed above except for the limitation of using a thermoplastic resin to adhere the pipe and the fin. Arai discloses a use of a thermoplastic resin coating on a heat exchanger pipe, which is melted to bond the pipe and the fin for a purpose of forming a good workability, adhesion and antirust force for the heat exchanger. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Arai's teaching in Marukasa's device for a purpose of forming a good workability, adhesion and antirust force for the heat exchanger.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marukasa in view of Aoki Hitoshi (JP 09-042877). Marukasa substantially discloses all of applicant's claimed invention as discussed above except for the limitation that end portion sides of each fin are bent to form inclined surfaces. Aoki discloses (figure 11-12) that end portion sides of each fin are bent to form inclined surfaces (27a) for a purpose of forming air flow guide for the fin. It would have been obvious to one having ordinary

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skill in the art at the time the invention was made to use Aoki's teaching in Marukasa's device for a purpose of forming air flow guide for the fin.

Claims 2,4,6,8,9,10,12,19,23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tokyo Radiator Mfg (JP 63-190777) in view of H.H. Charlton (US 2,851,082). Tokyo discloses (figures 1-3) a plurality of fin members composed of a plurality of fins (7) arranged in parallel, the fins having both opposing end surfaces provided with a plurality of engagement grooves (7a) in parallel and at regular spaces; a meandering pipe main body including a plurality of straight pipe section (6) to be disposed in the engagement grooves of the fin members; the plurality of straight pipe sections arranged in parallel and spaced by an insertion gap (shown in figure 1); a pair of meandering sections formed such that the plurality of straight pipe section are joined through bend portions, the pairs of meandering sections arranged so as to be opposed to each other through an opposing gap for fin members (shown in figure 2), wherein the opposing straight pipe sections of the one and the other meandering sections of the meandering pipe main section are paired and wherein within the plurality of insertion gap for the fin members formed in a tiled manner between a plurality of pair of adjacent straight pipe sections, each fin member is placed so as to lie astride the one and the other meandering sections, and wherein the straight pipe sections of the one meandering section are disposed in the engagement grooves (7a) on one end surface of the fin members, and the straight pipe sections of the other meandering section are disposed in

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the engagement grooves on the other surface of the fin members in a secured manner; the engagement grooves are provided at each opposing end surface at a bend surface side of the corrugated fin; the engagement grooves has a convex shape and collars (figures 3 and 4c,d) brought in surface contact with the pipe body; and the fin member is so formed that each fin is provided with a plurality of flow channels (7b). Tokyo does not disclose a connection pipe extending outwardly and twisted to connecting the one meandering section and the other meandering section opposing to each other. Charlton discloses (figures 7-10 and column 1, lines 15-27) a serpentine tube heat exchanger that has a meandering pipe main body including a pair of meandering sections and a return bend(112',113',124') extending outward and twisted in circumferential direction with regard to the axis directions of the straight pipe for a purpose of forming a continuous serpentine tube having a plurality of meandering section pipes arranged close and opposing one another. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Charlton's teaching in Tokyo's device for a purpose of forming a continuous serpentine tube having a plurality of meandering section pipes arranged close and opposing one another. Regarding claims 8,9,10 and 12, the method of forming the device (cutting off, press deformed, method in claim 12 and subjected to a coating process, etc) is not germane to the issue of the patentability of the device itself. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re

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Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). In this case, the heat exchanger in the product by process claim is the same as or obvious from the heat exchanger of the prior arts, the claim is unpatentable even though the prior heat exchanger was made by a different process. Regarding claim 19, fins and the tubes have surfaces, which is capable of being subjected to any coating process.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tokyo Radiator Mfg in view of Charlton as applied to claim 2 or 25 above, and further in view of Kramer (US 2,475,187). Tokyo and Charlton substantially disclose all of applicant's claimed invention as discussed above except for the limitation that the fin member is composed of a plurality of plate fins arranged in parallel. Kramer discloses (figures 1 and 2) a coiled heat exchanger that has the fin member is composed of a plurality of plate fins (3) arranged in parallel for a purpose of allowing the fins can be easily removed or inserted within two adjacent straight portion of the meandering pipe. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Kramer's teaching in the combination device of Tokyo and Charlton for a purpose of allowing the fins can be easily removed or inserted within two adjacent straight portion of the meandering pipe.

Claims 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tokyo and Charlton as applied to claim 2 or 25 above, and further in view of C. S. Simpelaar (US 3,106,958). Tokyo and Charlton substantially disclose all of applicant's claimed invention as discussed above except for the limitation that the grooves are provided at opposing end surface at a non-bend surface side of the corrugate fin and the meandering pipe is formed to have a width larger than of the engagement grooves.

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Simpellar discloses (figures 1,3-5 and column 3, lines 4-7) a meandering heat exchanger that has the opposing grooves of the fins (16) formed at a non-bend surface side of the fin so that the grooves can be easily to be formed and the pipe has a width larger than the width of the grooves (19) for a purpose of forming a snugly fit between the pipe and the fin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Simpellar's teaching in the combination device of Tokyo and Charlton for a purpose of forming a snugly fit between the pipe and the fin.

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tokyo and Charlton as applied to claim 2 or 25 above, and further in view of Arai Nobushige (JP 54088867A). Tokyo and Charlton substantially disclose all of applicant's claimed invention as discussed above except for the limitation of using a thermoplastic resin to adhere the pipe and the fin. Arai discloses a use of a thermoplastic resin coating on a heat exchanger pipe, which is melted to bond the pipe and the fin for a purpose of forming a good workability, adhesion and antirust force for the heat exchanger. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Arai's teaching in the combination device of Tokyo and Charlton for a purpose of forming a good workability, adhesion and antirust force for the heat exchanger.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tokyo Radiator Mfg (JP 63-190777) and Charlton (US 2,851,082) as applied to claim 2 or 25 above, and further in view of Aoki Hitoshi (JP 09-042877). Aoki discloses (figure 11-12) that end portion sides of each fin are bent to form inclined surfaces (27a) for a purpose of

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forming air flow guide for the fin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Aoki's teaching in Tokyo's device for a purpose of forming air flow guide for the fin.

Claims 15 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tokyo and Charlton as applied to claims 4 and 12 above, and further in view of Forst et al. (US 2,998,639). Tokyo and Charlton substantially disclose all of applicant's claimed invention as discussed above except for the limitation of clipping members, Forst discloses (figures 2-5) a heat exchanger has clipping members (9) for a purpose of securing the bend portion of the fin to be clipped between the meandering sections of the pipe. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Forst's teaching in the combination device of Tokyo and Charlton for a purpose of securing the bend portion of the fin to be clipped between the meandering sections of the pipe.

Claims 15 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tokyo and Charlton as applied to claims 4 and 12 above, and further in view of Paulman et al. (US 4,881,311). Tokyo and Charlton substantially disclose all of applicant's claimed invention as discussed above except for the limitation of clipping members, Paulman discloses (figures 4-5) a heat exchanger has clipping members (51) for a purpose of securing the bend portion of the fin to be clipped to the meandering sections of the pipe. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Paulman's teaching in the combination device of Tokyo

and Charlton for a purpose of securing the bend portion of the fin to be clipped to the meandering sections of the pipe.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Pasternak (US 3,780,799) discloses a heat exchanger and method of making the same.

J. B. Thomas et al. (US 2,908,070) discloses a method of making serpentine tube finned heat exchanger.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tho v. Duong whose telephone number is 571-272-4793. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tyler J. Cheryl can be reached on 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tho v Duong/
Primary Examiner, Art Unit 3744